

**BUSINESS, TRANSPORTATION AND HOUSING AGENCY  
OFFICE OF TOURISM  
NOTICE OF PROPOSED RULEMAKING**

May 6, 2011

Notice is hereby given that the Office of Tourism proposes to adopt the proposed regulations described below after considering all comments, objections and recommendations regarding the proposed action.

1. Tourism Marketing Act  
Chapter 7.65, Section 5350, 5353, 5358.5 – 5358.10, 5357.2, and 5360  
Tourism Assessment Collection Procedures

No public hearing is scheduled; however, any interested person or his or her duly authorized representative may request a public hearing no later than fifteen (15) days prior to the close of the public comment period.

The Office proposes to amend section 5350, Definitions, section 5353, Tourism Assessment Form, section 5357.2, Payment of Assessment by Passenger Car Rental Industry and adopt new sections 5358.5-5358.10 and 5360 in Title 10 of the California Code of Regulations in order to implement, interpret and make specific Government Code section 13995.65, 13995.69, and 13995.72, 13995.71, 13995.82, 13995.92 relating to collection of the tourism assessment from assessed businesses in California.

**AUTHORITY AND REFERENCE**

The proposed regulation has been adopted under the authority Government Code section 11152 and 13995.69 and in order to implement, interpret, and make specific Government Code sections 13995.65, 13995.69, and 13995.72, 13995.71, 13995.82, 13995.92.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Government Code sections 13995.65 – 13995.77 provides for the mailing and collection of an Assessment bill to assessed businesses. The proposed regulations will make specific the procedures for mailing the assessment bill, determining the amount due, consequence for not filing the assessment or failure to pay, and the appeal process.

Section 5350 provides definitions of terms used throughout the Tourism Marketing Act regulations. Section 5350(p)(4) is amended to correctly cite a reference to section 5353(g) to 5353(d)(2) for clarity. Section 5350(y) defines the Registration Form and this is proposed to be deleted. The form name has been changed to the Tourism Assessment Form and is proposed as new section (dd), to be in correct alphabetical order.

Section 5353 provides for the Registration Form, which is the basis of the assessment collection process. This form has not been amended since the inception of the program in the late 1990s and is proposed to be amended to be consistent with practice. The title is amended to read “Tourism Assessment Form”.

Existing section 5353 also provides for the form title, form number, revision date and instruction on completion of the form. This section is amended to identify these provisions as subsection (a) and to change the title of the form to Tourism Assessment Form and the form number to CTCA 047, revised 1/2/2011. This section also states that the business must complete a separate form for each Business Location. This has been amended to add that it must be completed by the due date indicated on the form.

Existing subsection 5353(a) required the business to affix the mailing label in the space provided and to correct any incorrect information. This language is proposed to be deleted and the proposed amendment will create a new section named: “Section I. Business Location Information. The amendment will indicate that the Tourism Assessment Form will be mailed with preprinted business information on the form and to correct any incorrect or missing information. The existing section required the Business location name and address. The amendment will also require the Tourism ID number and the contact information.

Existing subsection 5353(b) required the federal employer identification number and if it was not available it was mandatory to include the social security number of the primary owner. This section will delete provisions requiring the social security number. The amendment also corrects the acronym for federal employer identification number from FEN to FEIN.

Existing subsection 5353(c) required the business go to the listing of Industry Segments in section 5352 and to list their industry segment alphabetical code. The amended language will require the input of the industry code from section 5352, but detailed language regarding the industry categories is proposed for deletion in this section.

A new Subsection (b) will require information about the Parent Company or Information for billing purposes. The business will be required to provide the Bil Id Number, which is issued by the Office of Tourism, the name and address and contact information.

A new subsection (c) will require information on any business ownership changes, including the business name, dates business closed or change in owner.

Existing subsection (c)(2) and (3), (d) and (e) provide options on the form for a business to demonstrate they are exempt from the program. Subsection (c)(2) and (3) provides that if the business does not belong to one of the industry segments in section 5352, is a government agency or other type business as defined in 5350(i)(3) or (4), that they are exempt from the program. The exempt provisions are moved to new section (e).

Existing subsection (d) provides a travel agency, tour operator, packager or wholesaler that derives less than 20% of its revenue from travel and tourism to indicate that they are exempt from the program. This section is proposed for repeal.

Existing subsection (e) provides the business an option to pay a flat assessment rate of \$250,000, the maximum assessment amount. The business does not need to complete the rest of the form if they choose this option. This section is moved to new section(f).

New subsection (d) provides for a section on the form named: Section IV. Assessment Calculation. Existing section (f) requires the business to enter the month and year of the most recent income tax return. This section provides an example of the data required. The example has been amended in this section, to reflect a more current year. This subsection has also been reformatted as (d)(1). There are no other changes to this subsection.

Existing subsection (g) requires the business to provide the California gross receipts for the most current tax year. This section amends the references to the subsections that have been reformatted. This subsection has also been reformatted at (d)(2). There are no other changes to this subsection.

Existing subsection (h) provided an option to subtract exempt revenues from the California Gross Receipts. This section is proposed for deletion.

Existing subsection (i) requires the business to estimate the percentage of the California Gross Receipts that are Travel and Tourism Revenue. This subsection also explained how to show the percentage number and discussed the methods that would be used in the initial referendum passed. It also provided that if the Travel and Tourism Revenue was less than 8%, they were an exempt business. This subsection is reformatted as subsection (d)(3) and will only require that the business enter the percentage of revenue derived from Travel and Tourism Revenue. The other provisions are proposed for repeal.

Existing subsection (j) provided a calculation method to determine the dollars that were assessable in this program by referring to the subsection requesting the information. This subsection has been reformatted to (d)(4) and the calculation method described by name, multiplying the California Gross Receipts by the percentage of tourism number. There is no change in the information requested.

Existing subsection (k) required the business to multiply the number in the subsection above, by the assessment factor of .00045. This subsection provided that if the amount was less than \$50.00 the business was an exempt location and did not owe an assessment. This subsection has been reformatted to (d)(5) and assessment factor is amended to .00065. The exempt provision for a business owing less than \$50.00 is proposed for repeal.

New subsection(e) provides for a section on the form named: Section V. Determination of Exempt Status. This section provides the criteria for an exempt business: A business that

derives no revenue from any industry segment identified in section 5352; A business that is a public body or governmental agency, a business that is a travel agency, tour operator, packager or wholesaler that derives less than 20% of its revenue from travel and tourism, the business has total gross receipts of less than \$1,000,000 in the given tax year, the business percentage of revenue derived from tourism is less than 1%.

New subsection (f) provides for a section on the form named: Section VI. Optional Payment of Maximum Assessment. The provision in this subsection are moved from existing section (e) and allow the business to pay an optional maximum assessment of \$250,000.

Existing subsection (l) requires the name title and phone number of the authorized representative to whom the Office was to mail the referendum. This section is proposed for repeal.

Existing subsection (m) provides the business an opportunity to name another party to mail the referendum. This section is proposed for repeal.

Existing subsection (n) requires a signature under the penalty of perjury and required the name and title of the authorized representative. This section is reformatted as subsection(g).

A new subsection (g) provides for a new section on the form named: Section VII. Certification. This subsection shall require a signature under the penalty of perjury and required the name and title of the authorized representative. This section changes the perjury statement to be consistent with current legal practice.

A new Subchapter is proposed to be added to the Tourism Marketing Act. This Subchapter shall provide for a collection process and enforcement of the collections.

Section 5358.5 defines the Assessment Bill. The Assessment Bill is the document that states the amount of the assessment due. This section provides that the completed Tourism Assessment Form is the Assessment Bill and further defines how a partially completed Tourism Assessment Form is reviewed and processed. Subsection (b) provides that a Tourism Assessment Form partially completed by the Business Location, but containing sufficient information to compute the amount of assessment shall be computed by the Office and the Office shall issue an Assessment Bill. Subsection (b)(1) provides that the Assessment Bill shall state the amount of assessment owed by the Business Location and the date due for the payment of such assessment. Subsection (b)(1) provides that the Assessment Bill issued by the Office shall be mailed to the Business Location at the current address on file with the Office

Section 5358.6 provides the procedures for notifying a Business that they failed to provide the information required. Subsection (a) provides that the Office shall notify a Business Location of failure to provide information. Subsection (b) provides that any Business Location that fails to submit the required information 30 calendar days after the date of the notice of failure to submit the Tourism Assessment Form shall be assessed at the upper assessment level of its Industry Segment. This section provides that the upper assessment level for the industry segment shall

be determined by the highest assessment paid by a Business Location in each industry segment. It also provides that the retail and restaurant industry segment shall be two separate upper assessment levels, one for the retail industry and one for the restaurant industry.

Subsection (c) provides that the Office shall mail to the Business Location a Notice of Assessment Determination and that it will include: An explanation of the reasons and circumstances for the notice; An Assessment Determination reflecting the amount of assessment owed based on the upper assessment level of its industry segment; A statement declaring the notice to be an Assessment Bill and providing payment instructions to the Business Location including a due date for the payment of the assessment owed; and an explanation of the right to filing an Appeal. This section also provides that the Assessment Determination becomes final and effective unless an Appeal has been filed within 30 calendar days.

Section 5358.7 provides a Business with an appeal process to a Tourism Assessment Form, Assessment Bill, or an Assessment Determination. This section provides that a business may appeal if they assert that the Business Location does not meet the definition of an Assessed Business within its industry segment or if the level of assessment is incorrect. This section requires that the Appeal be submitted in writing no later than 30 days after the due date of the Tourism Assessment Form, or the date of the Assessment Bill or Assessment Determination. It must be completed under the penalty of perjury in a form of a declaration or an affidavit and the assertions must be supported with substantial evidence. This section provides that the Appeal will be granted or denied by the Office within 30 calendar days and it shall be in writing. This section also provides that if the appeal is denied, the Business Location shall be sent a Revised Assessment Bill and shall be considered an Assessed Business.

Section 5358.8 provides for a notice of a late Assessment Bill which is named a Deficiency Determination. The Deficiency Determination will provide the business with the amount due and penalties due. The amount established by a Deficiency Determination may also include the actual dollar amount to defray the cost of enforcing the collection. The Office shall mail to the Assessed Business a Notice of Proposed Deficiency Determination at the current address for the business on file with the Office and it shall include; An explanation of the reasoning and circumstances triggering the notice; the principal amount of assessment owed and delinquent, a determination of cost based on the actual cost incurred in the enforcement of the collection; the amount or rate of the penalty to be assessed commencing 30 days after the notice has been given to the Business. The Notice shall also include payment instruction and a notification of their right to file a Petition for Review. The Deficiency Determination shall become final unless a Petition for Review has been filed within 30 calendar days.

Section 5358.9 provides the Business a process for appealing the Deficiency Determination. A Business shall be allowed to file a Petition for Review requesting a review of the determination of deficiency. The petition is required to be in writing and state the specific grounds upon which it is based, and be supported by records applicable and declarations or affidavits under the penalty of perjury. The petition is required to be filed with the Office no later than 30 calendar days after the service of the Notice of Proposed Deficiency Determination.

The Office is allowed to grant an administrative hearing to provide the Assessed Business an opportunity to personally appear and present its request for Review.

This section provides that the Petition after review or administrative hearing will be granted or denied by the Office in writing no later than 30 calendar days of the date of the Petition, by issuing an Order of Review. The Notice will advise the Business on the assessment owed and a Revised Assessment Bill shall be issued. The Order of Review shall become final and effective 30 calendar days after completion of service.

Section 5359.10 provides that the Deficiency Determination can be taken to court for collection and judicial enforcement as provided in the statute. This section provides that initiation of such civil action shall be in the sole discretionary decision of the Secretary or in the discretionary decision of the Deputy Secretary of Tourism in consultation with the Executive Committee of the California Travel and Tourism Commission.

Section 5360 provides for the collection of the Passenger Car Rental Industry Assessment procedures. This section specifies that the Passenger Car Rental Industry Assessment shall be paid in accordance with the provisions in section 5357.2. It also provides that if payment is not received in the Office by the 25<sup>th</sup> of any given month, it shall be considered deficient and subject to the provisions of sections 5358.6 through 5358.10. This section also clarifies that a Passenger Car Rental Assessment Form submitted by the 25<sup>th</sup> of the month, but without payment, shall be considered deficient and shall be subject to the provisions the provisions of sections 5358.6 through 5358.10.

Existing Section 5357.2 provides that the Passenger Car Rental Industry assessment is payable monthly. It also provides that all assessments collected by a car rental company for a given month shall be submitted to the Office within 25 days of each month end beginning February 25, 2007. This section provides for the Passenger Car Rental Industry Segment Assessment Form, and requires its submittal monthly with the remittance of the assessment calculated. Subsection (c) provides that if the Passenger Car Rental Industry Assessment is late, they shall be assessed a late penalty. This subsection regarding late penalty is proposed for repeal.

### **COST ESTIMATES OF PROPOSED ACTION**

The Office has made the following determinations:

- Mandate on local agencies and school districts: None.
- Cost or savings to any state agency: None.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.

- Cost or savings in federal funding to the state: None.
- Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: None.
- Potential cost impact on representative person or businesses: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Significant effect on housing costs: None.

### **EFFECT ON SMALL BUSINESS**

The Office has determined that the proposed regulations will not directly effect small business because small businesses are exempt from the tourism assessment program. However, small business will be required to complete the Tourism Assessment Form as described in these regulations to establish the small business exemption.

### **ASSESSMENT REGARDING EFFECT ON JOBS/BUSINESS**

Adoption of these regulations will not facilitate the creation or elimination of jobs within California. The adoption of these regulations will not affect the creation or elimination of businesses within California or the expansion of businesses currently doing business within California.”

### **REASONABLE ALTERNATIVES CONSIDERED**

The Office must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the Office would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action. This proposed regulation will implement specific statute requirements.

### **BUSINESS REPORTING REQUIREMENT**

The Office finds that it is necessary for the health, safety, or welfare of the people of this state that the proposed regulation, which requires a report, apply to businesses.

### **WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory actions to the Office. Written comments will be accepted by the Office until 5:00 p.m. on June 27, 2011. Submit comments to:

Terri Toohey  
Business, Transportation and Housing Agency  
980 Ninth Street, Suite 2450  
Sacramento, CA 95814  
terri.toohey@bth.ca.gov

### **CONTACT PERSON**

Inquiries concerning the proposed action may be directed to:

Name: Terri Toohey  
Email: [terri.toohey@bth.ca.gov](mailto:terri.toohey@bth.ca.gov)  
Phone: 916-323-5400

The backup contact person for these inquiries is:

Name: Cris McLucas  
Email: [cmclucas@tourism.ca.gov](mailto:cmclucas@tourism.ca.gov)

Questions on the substance of the proposed regulations may be directed to:

Name: Gabor Morocz  
Email: [gabor.morocz@bth.ca.gov](mailto:gabor.morocz@bth.ca.gov)

### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After the close of the forty-five (45) day public comment period, the Office may adopt the proposed regulation. As a result of public comments, either oral or written, that are received by the Office regarding this proposal, the Office may determine that changes to the proposed regulation are appropriate. If the Office makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Office adopts the regulations as revised. The Office will provide notification of any such modifications to all persons whose comments were received during the public comment period, all persons whose comments (written or oral) were received at the public hearing (if one is held), and all persons who requested notice of such modifications. Otherwise, please send requests for copies of any modified regulations to the attention of Terri Toohey at the above email address. The Office will accept written comments on the modified regulations for 15 days after the date on which they are made available.

### **AVAILABILITY OF INITIAL STATEMENT OF REASONS, RULEMAKING FILE AND EXPRESS TERMS OF THE PROPOSED REGULATIONS**

The Office has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Business, Transportation and Housing Agency, 980 Ninth Street, Suite 2450, California during normal business working hours (9 am- 5 pm). Please contact Terri Toohey at the above email address to arrange a date and time

to inspect the files. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons and the proposed text of the regulations. Copies of these items are available, upon request, from the Office Contact Person designated in this Notice.

### **AVAILABILITY OF FINAL STATEMENT OF REASONS**

The Office is required to prepare a Final Statement of Reasons. Once the Office has prepared a Final Statement of Reasons, a copy will be made available to anyone who requests a copy. Requests for copies should be addressed to the Office Contact Person identified in this Notice.

### **OFFICE INTERNET WEBSITE**

The Office maintains an Internet website for the electronic publication and distribution of written material. Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at:  
[www.tourism.visitcalifornia.com](http://www.tourism.visitcalifornia.com).

**Business, Transportation And Housing Agency  
Office of Tourism  
Chapter 7.65, Tourism Marketing Act  
Sections 5350, 5353, 5358.5 – 5358.10, and 5360 and 5357.2  
Tourism Assessment Collection Procedures**

**INITIAL STATEMENT OF REASONS**

**SPECIFIC PURPOSE OF THE REGULATION**

The Board proposes to adopt regulations defining the collection process of the tourism assessment from assessed businesses in California. The Board also proposes to amend the Tourism Assessment Form to be consistent with current collection processes.

**NECESSITY**

The California Tourism Marketing Act established a program to generically promote California as a tourism destination in the late 1990s. The program, run by the California Travel and Tourism Commission, provides for an industry approved assessment to finance the marketing of California as a tourism destination. The assessment is administered by the Office of Tourism, a division of the Business, Transportation and Housing Agency. The assessment process and the original assessment factor were approved by industry in the initial referendum. A referendum is conducted every two years to elect industry representative for the Commission and to vote on the assessment process and assessment factor. In addition, every six years a referendum is conducted to determine if the industry wishes to continue or terminate the program.

Government Code Section 13995.68 provides that the secretary of Business, Transportation and Housing shall establish a list of businesses to be assessed and the amount of the assessment owed by each. Government Code Section 13995.69 provides that the Office of Tourism shall mail to each business identified as an assessable business, a form requesting information necessary to determine the assessment for that business.

The program originally compiled a list of businesses in the segments of industry that typically derive revenues from tourism. The industry segments were identified by industry representatives appointed by the Commission. Subsequently, a form was developed, promulgated and sent out to thousands of businesses in California. The original form was called a Registration Form. The form, in compliance with the statute, required business information including, name, address, type of business, possible exempt status provisions, and revenue and tax information.

The current Tourism Assessment Form, while essentially requiring the same information, is being amended to be consistent with technology, processes, and other changes in the law.

Existing section 5350 provides definitions used throughout the Tourism Marketing Act regulations. Proposed changes to section 5350 are for clarity. A reference to section 5353(g) is amended to 5353(d)(2). The definition of the Registration Form in Section 5350(y) is proposed to be deleted. The form name has been changed to the Tourism Assessment Form and is proposed as new section (dd), to be in correct alphabetical order.

Existing section 5353 provides for the form used by a California business to determine if they are eligible for the assessment and if so, the assessment amount due. Proposed changes to Section 5353 provide for renaming the form “Tourism Assessment Form” and the form number CVTCA 047, revised 1/2/2011 to be consistent with practice. The section is relettered for clarity. A new requirement is added that the form must be completed by the due date indicated on the form. This requirement will make the due date clear to the business.

Proposed changes to subsection 5353(a) will delete the requirement that the business affix the mailing label in the space provided and correct any incorrect information. The amendment will indicate that the Tourism Assessment Form will be mailed with preprinted business information on the form and to correct any incorrect or missing information. For clarity the form will be named by sections. A new “Section I. Business Location Information” is added and will continue to require the Business location name and address. The amendment will also require the Tourism ID number and the contact information.

Proposed changes to subsection 5353(b) will delete provisions requiring the social security number. The amendment also corrects the acronym for federal employer identification number from FEN to FEIN. The Office does not collect social security number information.

Proposed changes to subsection 5353(c) will still require the input of the industry code from section 5352, but detailed language regarding the industry categories is proposed for deletion in this section. The Office does not need the industry segment detail for determining the status of an assessable business.

Proposed subsection (b) will require information about the Parent Company or Information for billing purposes. The business will be required to provide the Bil Id Number, which is issued by the Office of Tourism, the name and address and contact information. This information is necessary for the Office to be able to contact the correct party. Many of the business locations that are assessable do not have any business office on location and are not authorized to complete the forms.

Proposed subsection (c) will require information on any business ownership changes, including the business name, dates business closed or change in owner. This information is also necessary for the Office to be able to contact the correct party.

Existing subsection (c)(2) and (3), (d) and (e) provide options on the form for a business to demonstrate they are exempt from the program. Subsection (c)(2) and (3) provides that if the business does not belong to one of the industry segments in section 5352, is a government

agency or other type business as defined in 5350(i)(3) or (4), that they are exempt from the program. The exempt provisions are moved to new section (e) for consistency.

Proposed repeal of subsection (d) is for non duplication. This requirement is provided for in statute.

Existing subsection (e) provides the business an option to pay a flat assessment rate of \$250,000, the maximum assessment amount. The business does not need to complete the rest of the form if they choose this option. This section is moved to new section(f) for consistency with the form format and clarity.

Proposed new subsection (d) provides for a section on the form named: Section IV. Assessment Calculation. Existing section (f) requires the business to enter the month and year of the most recent income tax return. This section provides an example of the data required. The example has been amended in this section, to reflect a more current year. This subsection has also been reformatted as (d)(1). These changes are for clarity.

Existing subsection (g) requires the business to provide the California gross receipts for the most current tax year. This section amends the references to the subsections that have been reformatted. This subsection has also been reformatted at (d)(2). This change is for consistency with the form and for clarity.

Proposed repeal of subsection (h) is for clarity. This provision was not relevant in calculating the tourism assessment and caused confusion in completion of the form.

Proposed changes to subsection (d)(3) reformats this subsection and will continue to require that the business enter the percentage of revenue derived from Travel and Tourism Revenue. The other provisions are proposed for repeal. The changes are for clarity. The repealed provisions do not apply in calculating the assessment and caused confusion in completion of the form.

Proposed change to subsection (j) reformats this subsection for consistency. There is no change in the information requested. The calculation method to determine the dollars that are assessable in this program is still valid and required.

Proposed change to subsection (k) reformats this subsection for consistency. This section provides the assessment factor. The assessment factor is amended to .00065. This assessment rate was adopted by the industry in an industry-wide referendum in 2005 as provided for in statute. The exempt provision for a business owing less than \$50.00 is proposed for repeal. This is not provided for in statute and the program does not provide for this exemption.

Proposed new subsection (e) provides for a section on the form named: Section V. Determination of Exempt Status. This proposed change moves all the criteria for an exempt business on the original Registration Form to this section for consistency and clarity. The proposal also changes the exemption for a business with less than 8% revenue from travel and tourism to 1% revenue from travel and tourism. This amendment to the exemption provisions

was adopted by the industry in an industry-wide referendum in 2005. The original exemption provision at 8% was established by a Tourism Committee established when the Tourism Marketing Act was originally enacted. The Committee was comprised of a group of industry representatives.

Proposed new subsection(f) provides for a section on the form named: Section VI. Optional Payment of Maximum Assessment. The provision in this subsection are moved from existing section (e) and allow the business to pay an optional maximum assessment of \$250,000. This provision allows a company to bypass the process of completing the calculation formula. A company that chooses this option, will not be required to disclose its revenue for a given year as provided on its California Income Tax return. This is an option that some companies chose and continues to be the maximum threshold for a Tourism Assessment Due.

The proposed repeal of subsection (l), which requires the information on the authorized representative, is for consistency and clarity. These requirements will be moved into a new certification section.

The proposed repeal of subsection (m), regarding the referendum ballot mailing, is for clarity. This information is not collected and used by the Office.

Proposed changes to subsection (n) will reformat the information which requires a signature under the penalty of perjury and required the name and title of the authorized representative. This is for clarity.

A proposed new subsection (g) provides for a new section on the form named: Section VII. Certification. This subsection shall require a signature under the penalty of perjury and required the name and title of the authorized representative. This section changes the perjury statement to be consistent with current legal practice.

A new Subchapter is proposed to be added to the regulations. This Subchapter shall provide for a collection process and enforcement of the collections.

Government Code sections 13995.65 – 13995.84 provides for the mailing and collection of an Assessment bill to assessed businesses. The proposed regulations will make specific the procedures for mailing the assessment bill, determining the amount due, consequence for not filing the assessment or failure to pay, and the appeal process.

Section 5358.5 defines the Assessment Bill. The Assessment Bill is the document that states the amount of the assessment due. This section provides that the completed Tourism Assessment Form is the Assessment Bill and further defines how a partially completed Tourism Assessment Form is reviewed and processed. Subsection (b) provides that a Tourism Assessment Form partially completed by the Business Location, but containing sufficient information to compute the amount of assessment shall be computed by the Office and the Office shall issue an Assessment Bill. Subsection (b)(1) provides that the Assessment Bill shall state the amount of assessment owed by the Business Location and the date due for the payment of such assessment.

This terms used in the Government Code are defined in this section to be consistent with the current processes used by the Office of Tourism to collect the assessment dues. Defining the related process to the term used in the Government Code is a more realistic solution than amending the collection process. Subsection (b)(1) provides that the Assessment Bill issued by the Office shall be mailed to the Business Location at the current address on file with the Office. This amendment is for clarity.

Section 5358.6 provides the procedures for notifying a Business that they failed to provide the information required. Subsection (a) provides that the Office shall notify a Business Location of failure to provide information. This is necessary to insure that the business has received the original form and to provide the business the opportunity to submit the form as required before penalties accrue. Subsection (b) provides that any Business Location that fails to submit the required information 30 calendar days after the date of the notice of failure to submit the Tourism Assessment Form shall be assessed at the upper assessment level of its Industry Segment. This is consistent with the Government Code that requires the business be given 30 days after the notice of failure to submit the Form. This section also provides that the upper assessment level for the industry segment shall be determined by the highest assessment paid by a Business Location in each industry segment. It also provides that the retail and restaurant industry segment shall be two separate upper assessment levels, one for the retail industry and one for the restaurant industry. This information is for full notification to the business of their obligation and provide them incentive to complete the form and either be exempt or pay they assessment at the appropriate rate for their operation.

Subsection (c) provides that the Office shall mail to the Business Location a Notice of Assessment Determination and that it will include: An explanation of the reasons and circumstances for the notice; An Assessment Determination reflecting the amount of assessment owed based on the upper assessment level of its industry segment; A statement declaring the notice to be an Assessment Bill and providing payment instructions to the Business Location including a due date for the payment of the assessment owed; and an explanation of the right to filing an Appeal. This section insures that the Offices provides the business with all the information needed to pay the assessment or to determine their options. This section also provides that the Assessment Determination becomes final and effective unless an Appeal has been filed within 30 calendar days. This notifies the business of its rights.

Section 5358.7 provides a Business with an appeal process to a Tourism Assessment Form, Assessment Bill, or an Assessment Determination. This section provides that a business may appeal if they assert that the Business Location does not meet the definition of an Assessed Business within its industry segment or if the level of assessment is incorrect. This is necessary to give the business the opportunity to demonstrate that they have been incorrectly identified as a business that derives revenue from tourism or that the percentage of tourism revenue was incorrectly calculated. This section requires that the Appeal be submitted in writing no later than 30 days after the due date of the Tourism Assessment Form, or the date of the Assessment Bill or Assessment Determination. This information is for due process of the appeal. It must be completed under the penalty of perjury in a form of a declaration or an affidavit and the assertions must be supported with substantial evidence. This is necessary to verify that the

information they are submitting is true. This section also provides that the Appeal will be granted or denied by the Office within 30 calendar days and it shall be in writing. This will provide the business with a timeframe for the response. This section also provides that if the appeal is denied, the Business Location shall be sent a Revised Assessment Bill and shall be considered an Assessed Business. This will provide the business with the notice of the decision and also give them a new assessment bill which needs to be paid in accordance with the provisions in these regulations. Also, it will establish that they are an assessed business and therefore subject to all the provisions of these regulations.

Section 5358.8 provides for a notice of a late Assessment Bill which is named a Deficiency Determination. The Deficiency Determination will provide the business with the amount due and penalties due. The amount established by a Deficiency Determination may also include the actual dollar amount to defray the cost of enforcing the collection. The Deficiency Determination is necessary because the secretary is required by statute to make a determination that an assessment is deficient and the payment due. The Office shall mail to the Assessed Business a Notice of Proposed Deficiency Determination at the current address for the business on file with the Office and it shall include; An explanation of the reasoning and circumstances triggering the notice; the principal amount of assessment owed and delinquent, a determination of cost based on the actual cost incurred in the enforcement of the collection; the amount or rate of the penalty to be assessed commencing 30 days after the notice has been given to the Business. The Notice shall also include payment instruction and a notification of their right to file a Petition for Review. The information provided on the Notice will insure that the business is informed of all monies due, the possible continued penalties and the appeal provisions. This information is also provided for in statute, but is repeated here for consistency and ease of use for the business. The Deficiency Determination shall become final unless a Petition for Review has been filed within 30 calendar days. This section is consistent with the statute provisions and informs the business of all penalties and costs associated with the late Assessment Bill.

Section 5358.9 provides the Business a process for appealing the Deficiency Determination. A Business shall be allowed to file a Petition for Review requesting a review of the determination of deficiency. The petition is required to be in writing and state the specific grounds upon which it is based, and be supported by records applicable and declarations or affidavits under the penalty of perjury. The petition is required to be filed with the Office no later than 30 calendar days after the service of the Notice of Proposed Deficiency Determination. This information is required in statute, but is repeated here for consistency and ease of use for the business. The Office is allowed to grant an administrative hearing to provide the Assessed Business an opportunity to personally appear and present its request for Review. This is necessary in order to allow the business an opportunity to personally appeal the determination. This section provides that the Petition after review or administrative hearing will be granted or denied by the Office in writing no later than 30 calendar days of the date of the Petition, by issuing an Order of Review. The Notice will advise the Business on the assessment owed and a Revised Assessment Bill shall be issued. The Order of Review shall become final and effective 30 calendar days after completion of service.

Section 5359.10 provides that the Deficiency Determination can be taken to court for collection and judicial enforcement as provided in the statute. This section provides that initiation of such civil action shall be in the sole discretionary decision of the Secretary or in the discretionary decision of the Deputy Secretary of Tourism in consultation with the Executive Committee of the California Travel and Tourism Commission. This section is consistent with the provisions in the statute and are outlined here for clarity.

Section 5360 provides for the collection of the Passenger Car Rental Industry Assessment procedures. This section specifies that the Passenger Car Rental Industry Assessment shall be paid in accordance with the provisions in section 5357.2. It also provides that if payment is not received in the Office by the 25<sup>th</sup> of any given month, it shall be considered deficient and subject to the provisions of sections 5358.6 through 5358.10. This language is added to clarify that the collection procedures also apply to the Passenger Car Rental Industry. This section also clarifies that a Passenger Car Rental Assessment Form submitted by the 25<sup>th</sup> of the month, but without payment, shall be considered deficient and shall be subject to the provisions the provisions of sections 5358.6 through 5358.10. This language is also added to clarify that the collection procedures also apply to the Passenger Car Rental Industry.

Existing Section 5357.2 provides that the Passenger Car Rental Industry assessment is payable monthly. It also provides that all assessments collected by a car rental company for a given month shall be submitted to the Office within 25 days of each month end beginning February 25, 2007. This section provides for the Passenger Car Rental Industry Segment Assessment Form, and requires its submittal monthly with the remittance of the assessment calculated. Subsection (c) provides that if the Passenger Car Rental Industry Assessment is late, they shall be assessed a late penalty. This subsection regarding late penalty is proposed for repeal because Section 5360 will provide the provisions for all late payments.

## **TECHNICAL, THEORETICAL, AND /OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS**

The Board did not rely upon any technical, theoretical, or empirical studies, reports, or documents in proposing the adoption of this regulation.

## **REASONABLE ALTERNATIVES TO THE REGULATION AND THE OFFICE'S REASON FOR REJECTING THOSE ALTERNATIVES**

No other alternatives were presented to or considered by the Office. This regulation implements Government Code sections 13995.65, 13995.69, 13995.72, 13995.71, 13995.82, and 13995.92.

## **REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS**

The Office has not identified any alternatives that would lessen any adverse impact on small business. This proposed regulation will not affect small business.

**EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC  
IMPACT ON ANY BUSINESS**

The Office must determine that the proposed regulations would not have a significant adverse economic impact on businesses.

**SPECIFIC TECHNOLOGY OR EQUIPMENT**

This regulation will not mandate the use of any specific technology or equipment.

Tourism Marketing Act  
Chapter 7.65  
Tourism Assessment Collection Procedures

Amend Section 5350 to read:

Section 5350. Definitions

- (a) "Accommodation Location" is any passenger car rental location on the property of a hotel, motel or other accommodation facility.
- (b) "Act" means the California Tourism Marketing Act, Government Code Section 13995 et seq.
- (c) "Airport Location" is any passenger car rental location on an airport property or servicing an airport and subject to either an airport concession agreement or an airport access fee agreement.
- (d) "Assessed Business" means a Business which derives any California Gross Receipts from a California Business Location from one or more Industry Segments and participates in the Tourism Assessment Program by paying an annual Assessment pursuant to the Act.
- (e) "Assessment" means the amount of Business Location annual fees owed by the Assessed Business to the Office pursuant to the Act.
- (f) "Assessment Rate" for the Passenger Rental Car Industry Segment shall be calculated by taking (i) the funding required for the Commission under the Act (\$25,000,000 for fiscal year 2006-2007; \$50,000,000 for fiscal year 2007-2008 and thereafter) less (ii) the Estimated Amount for such fiscal year, and dividing this result by (iii) the estimated Revenue for the entire Passenger Car Rental Industry segment for such fiscal year as determined under Section 5357.1 below. For all other segments, the "Assessment Rate" shall be as determined by referendum under the Act.
- (g) "Authorized Representative" means a person authorized by the Business to sign and provide the information required in the Registration Form and the Ballot. Examples of authorized representatives include sole proprietor, corporate officers, general partners and fiduciaries.
- (h) "Ballot" means the written document sent to Assessed Businesses consisting of the information listed in Section 5355.
- (i) "Business" means an individual (sole proprietorship), partnership, fiduciary, corporation, association, or any other business organization, whether operating on a profit or nonprofit basis.
- (j) "Business Location" means the California street address where Travel and Tourism Revenues are generated by a Business. If the Business has more than one business license for a single address, then each activity requiring a business license is a separate Business Location.

(k) California Travel and Tourism Commission ( "CTTC") is the commission that promotes California as a tourism destination, both domestically and internationally. It is headquartered at 980 9th Street, Suite 480, Sacramento, CA 95814.

(l) "California Gross Receipts" means gross receipts minus returns and allowances from sales in California. Examples of California Gross Receipts are the amount shown on line 1c of Schedule F, Form 100 of the California Franchise Tax Board, 1996 revision date, line 3 on Schedule C, Form 1040 of the Internal Revenue Service, 1996 revision date, or for multi-state operations, column (b) on line 3, "total sales" of schedule R-1 of the California Franchise Tax Board, 1996 revision date.

(m) "Commissioner" means a member of the board of commissioners of the California Travel and Tourism Commission, established pursuant to Government Code Section 13995.40.

(n) "Estimated Amount" means for a given fiscal year the sum of the amount estimated by the Office to be (i) payable as Assessments by all Assessed Businesses other than the Passenger Car Rental Industry Segment and (ii) contributed by the State of California general funding.

(o) "Exempt Business" means a Business meeting one or both of the following requirements:

(1) The Business is an Exempt Travel Agent/Tour Operator; and/or

(2) The Business is a Public Body.

(p) "Exempt Business Location" means a Business Location meeting one or more of the following:

(1) The Business Location derives less than one percent (1%) of its California Gross Receipts from Travel and Tourism Revenue within Industry Segment(s);

(2) The Business Location derives California Gross Receipts from any of the following Industry Segments within the attractions and recreation Industry Category where the business does not charge an admission fee or gate: museums and art galleries, arts or science center, historical society, planetarium, botanical and zoological gardens, aquarium, animal and reptile exhibit and arboretum;

(3) The Business Location derives Revenue from any Industry Segment(s) in the restaurants and retail Industry Category, where the business activity meets one or more of the following definitions:

(A) Contract feeders serving hospitals, schools, prisons, employee cafeterias and/or restaurants;

(B) Catering vendor trucks serving job sites and other employment locations; and/or

(C) Restaurants on university campuses and military bases; and/or

(4) The Business Location has California Gross Receipts under one million dollars (\$1,000,000) for the accounting period listed in the Business' most recent income tax return. If the accounting period is less than twelve (12) months, California Gross Receipts shall be annualized using the formula described in section 5353(~~g~~) (d)(2).

(q) "Exempt Revenues" means:

(1) Within the attractions and recreation Industry Category, California Gross Revenue from rentals of the following for more than thirty (30) days: canoes, houseboats, pleasure boats, rowboats, sailboats, surfing equipment and spaces in marine basins and/or yacht basins.

(2) Within the travel and transportation Industry Category, California Gross Revenue from interstate transportation and/or sales of diesel fuel.

(3) Within the travel and transportation Industry Category, California Gross Revenue from regular route intrastate and interstate bus service; provided, however that Exempt Revenues shall not include California Gross Revenue derived from bus service which is of a type that requires authority (whether in the form of a certificate of public convenience and necessity or a permit) to operate as a charter-party carrier of passengers pursuant to Chapter 8 (commencing with Section 5351) of Division 2 of the Public Utilities Code.

(r) "Exempt Travel Agent/Tour Operator" means a Business which meets both of the following requirements:

(1) It derives at least 51% of its California Gross Receipts from one or more of the following Industry Segments: travel agencies and/or tour operator/packager & wholesaler ( "Travel Agent"); and

(2) It derives less than twenty percent (20%) of its Travel Agent California Gross Receipts from Travel and Tourism Revenue where the travel occurs within California.

(s) "Industry Category" means the following classifications within the tourism industry:

(1) Accommodations.

(2) Restaurants and retail.

(3) Attractions and recreation.

(4) Transportation and travel services.

(5) Passenger Car Rental Industry.

The definition of each Industry Category is the sum of all Industry Segments contained within that Industry Category. For example, the accommodations Industry Category is the sum of its Industry Segments, including motel, vacation lodges and ski lodges.

- (t) "Industry Segment" means those subsets of Industry Categories contained in Section 5352.
- (u) "Office" means the Office of Tourism of the State of California, Business, Transportation and Housing Agency that administers the California Travel and Tourism Assessment including processing of all payments. It is also located at 980 9th Street, Suite 480, Sacramento, CA 95814.
- (v) "Paid in Full" means the Assessed Business has paid all past and current annual Assessments, late fees and/or penalties due.
- (w) "Passenger Car Rental Industry Segment" is defined as those companies renting passenger vehicles at an Airport Location or Accommodation Location in California. Passenger Vehicle is as defined in Section 465 of the California Vehicle Code.
- (x) "Public Body" means a public entity or a corporation where a majority of the corporation's board of directors is appointed by a public official or public entity, or serves on the corporation's board of directors by virtue of being elected to public office, or both. As used herein, a "public entity" is an agency, department or instrumentality of the United States, State of California, or any political subdivision thereof. As used herein, a "public official" is an employee of a public body or a person elected to the public body, who serves as a representative of that public body when making the appointment.
- ~~(y) "Registration Form" means the form described in Section 5353.~~
- (z) "Referendum" means any vote by mailed ballot of measures recommended by the Commission and approved by the Secretary pursuant to Government Code Section 13995.60 and/or 13995.92.
- (aa) "Referendum Request" means the method used by Assessed Businesses to place on a Referendum additional Commissioner candidates and/or a different assessment level pursuant to Government Code Section 13995.62 and section 5354.1 of this chapter except for the initial referendum, which shall consist of measures contained in the selection committee report, discussed in Section 13995.30.
- (bb) "Revenue" is all paid time and/or mileage charges only, including upgrades, as shown on each concluded Rental Agreement, net of any discount at California Airport Locations and Accommodation Locations. Revenue shall not include "replacement rentals". A "replacement rental" is defined as any rental which is a temporary replacement of an individual's primary vehicle arising from loss of use due to maintenance, repairs, physical damage, or theft.
- (cc) "Secretary" means the Secretary of the Business, Transportation and Housing Agency, or his/her designee.
- (dd) "Tourism Assessment Form" means the form described in Section 5353.

~~(eee)~~ "Travel and Tourism Revenue" means California Gross Receipts derived from expenditures to and/or within California by people who (1) travel at least fifty (50) miles from home, one way, for purposes other than commuting to work or school; or (2) have an overnight accommodation as part of the travel, regardless of the distance or purpose traveled. "Home" as used in this definition means the place where the person has resided for the most recent 31 consecutive days.

~~(ffe)~~ "Voluntary Participant" means a Business which participates in the Tourism Assessment Program pursuant to Government Code Sections 13995.49 or 13995.77.

~~(ggf)~~ "Weighted Vote" means a vote equal to the Assessment paid by the Assessed Business; used to determine issues on a Referendum pursuant to Government Code Section 13995.64.

Note: Authority cited: Section 13995.69, Government Code. Reference: Sections 13995.20, 13995.40, 13995.49, 13995.60, 13995.64, 13995.65.5, 13995.77 and 13995.92, Government Code. Authority cited: Section 13995.69, Government Code. Reference: Sections 13995.20, 13995.40, 13995.49, 13995.60, 13995.64, 13995.65.5, 13995.77 and 13995.92, Government Code.

Amend Section 5353 to read:

Section 5353. ~~Registration~~ Tourism Assessment Form

(a) The ~~Registration~~ Tourism Assessment Form, ~~entitled "California Tourism Marketing Act: Registration Form, Form 2650 (new 2/97)"~~ entitled "California Tourism Marketing Act: Registration Form, Form CTCA 0472650 (new 2/97 rev. 1/2/2011)" shall consist of the below listed items. A Business must complete a separate form for each Business Location by the due date indicated on the Form.

~~(a) Affix the mailing label in the space provided at the beginning of the Registration Form. If the preprinted label is incorrect or missing, enter the correct information as follows:~~  
~~Section I. Business Location Information. Affix the mailing label in the space provided at the beginning of the Registration Form. A pre-printed Tourism Assessment Form shall be mailed to the Business and shall include the following information. If the preprinted label information is incorrect or missing, enter the correct information as follows:~~

~~(1) Business Location name;~~

~~(1) Tourism ID Number~~

~~(2) Business Location name, Address and Contact Information;~~

~~(2) Address; and~~

~~(3) City, state and zip code.~~

~~(b) (3) Enter the federal employer identification number ("FEIN") of the Business. If the Business does not have an FEN, it is mandatory to list the social security number of the primary owner. The social security number is required pursuant to the Act and will be used as an identifier for the Business.~~

~~(e)(1) (4) Go to the listing of section 5352 Industry Segments contained in the package containing the Registration Form. Identify the Industry Segment from which the Business Location earns the greatest portion of its California Gross Receipts. The Industry Segments are provided in Section 5352. List the alphabetical code of the Industry Category in which the Industry Segment is listed, or list "E:other" as described in subsection (c)(2). For example, the hotel Industry Segment is listed in the accommodations Industry Category: "A." The Industry Categories shall be listed as follows:~~

~~A: accommodations;~~

~~B: restaurants and retail;~~

~~C: attractions and recreation; and~~

~~D: transportation and travel services.~~

(b) Section II. Parent or Billing Information. This information shall be included for any business that has a separate mailing address or a parent company to which all information for this program is sent.

(1) Bil ID Number,

(2) Billing or Parent Name

(3) Address and Contact Information

(c) Section III. Ownership Changes. Provide information regarding any change in ownership in the past year, including change in business name, business closed or change in ownership.

~~(2) Select "E:other," if the Business Location derives no California Gross Receipts from any Industry Segment, is a Public Body or is an Exempt Business Location pursuant to subsection 5350(i)(3) and/or (4), and describe the principle activity of this Business (or reason why this is a Public Body or Exempt Business Location).~~

~~(3) If the Business listed "E other," skip to the signature line described in subsection (n). Otherwise, the Business shall proceed with the next line in the Registration Form.~~

~~(d) Answer the question: is this Business a travel agency, tour operator, packager or wholesaler that derives less than twenty percent (20%) of its California Gross Revenue from Travel and Tourism Revenue where the travel occurs within California. If the answer is yes, the Business is an Exempt Business. Skip to the signature line described in subsection (n). Otherwise, the Business shall proceed with the next line in the Registration Form.~~

~~(e) If the Business wishes to pay a flat rate assessment of \$250,000 for this Business Location, which is the maximum assessment amount, complete that number in the assigned space and skip to the signature line described in subsection (n). Otherwise, the Business shall proceed with the next line in the Registration Form.~~

(d) Section IV. Assessment Calculation.

~~(f)~~(1) Enter the ending month and the year of the accounting period for the Business' most recent income tax return. ~~For example, for the calendar year 1996, enter 12/96.~~  
For example, for the calendar year ~~1996~~2011, enter ~~12/96~~12/11.

~~(g)~~ (2) Enter the California Gross Receipts of this Business Location for the period listed in subsection ~~(f)~~(d)(1). If the income tax return for the period shown in subsection ~~(f)~~(d)(1) is less than twelve months, annualize the revenue by multiplying the revenue by the number twelve (12) and dividing the result by the number of months on the short period. Thus, a business with \$1,000,000 in California Gross Receipts for six months would multiply that number by 12 and divide by 6, giving an annualized California Gross Receipts of \$2,000,000.

~~(h) From the amount listed in subsection (g), subtract Exempt Revenues and any California Gross Receipts not derived from Industry Segments and enter the balance.~~

~~(3) (i)~~ Enter the estimated percentage of the California gross receipts ~~subsection (h) figure~~ that is Travel and Tourism Revenue. ~~For example, 25% would be written as .25, 8% as .08. The percentage of Travel and Tourism shall be estimated for the year ending on the date specified in subsection (f). If the Initial Referendum passes, assessments will be based upon documented surveys or other methods of determining the Travel and Tourism percentage. If the number listed is less than .08, this is an Exempt Business Location. Skip to the signature line described in subsection (n). Otherwise, the Business shall proceed with the next line in the Registration Form.~~

~~(4) (j)~~ Multiply the number written in answer to the subsection ~~(h)~~ question by the number written in answer to the subsection ~~(i)~~ question. Multiply the California Gross Receipts number by the percentage. Enter the resulting number. For example, \$1,000,000 times 0.65=\$650,000.

~~(5) (k)~~ Multiply the number listed in subsection ~~(j)~~(d)(4) by the assessment factor of .00045 .00065 and enter the resulting number, rounded to the nearest dollar. This amount represents the Assessment Due. ~~If the amount is less than fifty dollars (\$50), this is an Exempt Business Location. Skip to the signature line described in subsection (n). If the answer to line 10 is equal to or greater than \$50, then proceed with the next line in the Registration Form.~~

(e) Section V. Determination of Exempt Status

A business shall indicate if any of the exempt status provisions apply to the business location.

(1) The Business Location derives no California Gross Receipts from any Industry Segment.

(2) The Business Location is a Public Body pursuant to section 5350(o)(2) or is an Exempt Business Location pursuant to subsection 5350(p), and describe the principle activity of this Business (or reason why this is a Public Body or Exempt Business Location).

(3) The Business a travel agency, tour operator, packager or wholesaler that derives less than twenty percent (20%) of its California Gross Revenue from Travel and Tourism Revenue where the travel occurs within California.

(4) The business total gross receipts for the year, as entered in Section IV. are less than one

million dollars.

(5) The business total percentage of tourism revenue is less than one percent.

(f) Section VI. Optional Payment of Maximum Assessment. If the Business wishes to pay a flat rate assessment of \$250,000 for this Business Location, which is the maximum assessment amount, check the box in this section.

~~(l) List the name, title and phone number of the Authorized Representative to whom the Office shall mail the Referendum.~~

~~(m) If the Referendum ballot should be mailed to a different address or name than that pre-printed on the Registration Form, check the provided box and list the corrected Business name, address, and city, state, zip code.~~

~~(h)~~(g) Section VII. Certification

~~(n)~~(1) The portion of the Registration Form Tourism Assessment Form requiring requires a signature commences with the following: "under penalty of perjury, under the laws of the State of California that the foregoing is true and correct, I declare that I have examined the above information and to the best of my knowledge and belief, it is true, correct and complete." This section of the Registration Form shall be completed listing the name and title of the Authorized Representative, and shall include the signature and date of signature of the Authorized Representative.

Note: Authority cited: Sections 11152 and ~~15372.125, 15372.125~~ 13995.69, Government Code.  
Reference: Sections ~~15372.66, 15372.86, 15372.118 and 15372.121~~ 15372.66, 15372.86, 15372.118 and 15372.121 13995.65, 13995.69, 13995.68, 13995.77, Government Code

Add new Subchapter 5 to read:

Subchapter 5. Tourism Assessment Program Collection and Enforcement

Section 5358.5. Assessment Bill

(a) A Tourism Assessment Form completed by the Business Location and approved by the Office shall constitute an Assessment Bill. A completed Tourism Assessment Form shall include the most current yearly gross receipts, the percentage of revenue derived from tourism that year, a correct calculation of the assessment due, contact information, and a signature under penalty of perjury that the information is true and correct as required in section 5353.

(b) A Tourism Assessment Form partially completed by the Business Location, but containing sufficient information to compute the amount of assessment shall be reviewed by the Office. The Office shall compute the amount of assessment based on the information provided and issue an Assessment Bill.

(1) An Assessment Bill shall state the amount of assessment owed by the Business Location and the date due for the payment of such assessment.

(2) The Assessment Bill issued by the Office shall be mailed to the Business Location at the current address on file with the Office. Service of the Assessment Bill shall be complete upon deposit in the U.S. mail.

Note: Authority cited: Sections 11152 and 13995.69, Government Code. Reference: Sections 13995.65, 13995.69, Government Code

#### 5358.6. Failure to provide information for Assessment

(a) The Office shall notice a Business Location of failure to provide information as required in section 5353.

(b) Any Business Location that fails to submit the required information 30 calendar days after the date of the notice of failure to submit the Tourism Assessment Form shall be assessed at the upper assessment level of its Industry Segment.

(1) The upper assessment level for the industry segment shall be determined by the highest assessment paid by a Business Location in each industry segment.

(2) The retail and restaurant industry segment shall be two separate upper assessment levels, one for the retail industry and one for the restaurant industry.

(c) The Office shall mail to the Business Location a Notice of Assessment Determination at the current address for the Business Location on file with the Office that will include:

(1) An explanation of the reasons and circumstances for the notice;

(2) An Assessment Determination reflecting the amount of assessment owed as determined by subdivision (b);

(3) A statement declaring the notice to be an Assessment Bill and providing payment instructions to the Business Location including a due date for the payment of the assessment owed; and

(4) An explanation of the right to filing an Appeal as described in Section 5358.7.

(d) The notice shall be delivered to the Business Location by mail or personal service and shall be complete upon deposit in the U.S. mail or upon actual personal service.

(e) The Assessment Determination becomes final and effective unless an Appeal has been filed within 30 calendar days of completion of service.

Note: Authority cited: Sections 11152 and 13995.69, Government Code. Reference: Sections 13995.65, 13995.69, Government Code

#### 5358.7. Appeal of Assessment

(a) An Assessed Business receiving a Tourism Assessment Form, Assessment Bill, or an Assessment Determination may file an Appeal with the Office on any of the following grounds:

(1) Assertion of the fact that the Business Location does not meet the definition of an Assessed Business within its industry segment and thereby exempt;

(2) Stating that the level of assessment is incorrect.

(b) The Appeal must be submitted in writing complying with all the following requirements:

(1) The writing must be completed under the penalty of perjury in a form of a declaration or an affidavit.

(2) The assertions must be supported with substantial evidence establishing the validity of the allegations in the appeal.

- (3) The Appeal shall be filed with the Office no later than 30 days after the due date of the Tourism Assessment Form, or the date of the Assessment Bill or Assessment Determination.
- (4) Filing with the Office is completed on the date of actual receipt by the Office through mail or by personal service.
- (c) The Appeal will be granted or denied by the Office within 30 calendar days. The Appeal Determination shall be in writing and sent by U.S. mail to the business at the current address for the Business Location on file with the Office.
- (1) If the appeal is granted, the Business Location shall be advised of the successful appeal and provided with information regarding the Business Location status.
- (2) If the appeal is denied, the Business Location shall be advised on the process to make the assessment payment in a Revised Assessment Bill and shall be considered an Assessed Business.
- (3) A revised Assessment Bill corrected due to an error caused by the failure of the Business Location to provide the required information in a timely manner shall include the actual incurred cost for recouping the cost in making the correction.
- (4) An Appeal Determination may also include a Deficiency Determination as described in section 5258.8, if applicable.

Note: Authority cited: Sections 11152 and 13995.69, Government Code. Reference: Sections 13995.65, 13995.69, 13995.72, Government Code

#### Section 5358.8. Deficiency of Payment of Assessment

- (a) The Office shall notice an Assessed Business of a late Assessment Bill. Upon noticing the Assessed Business, the Office shall make a determination that the assessment is deficient.
- (b) The amount established by a Deficiency Determination shall include:
  - (1) The principal amount of assessment, and
  - (2) An amount of penalty of 7% per annum prorated over the days unpaid.
- (c) The amount established by a Deficiency Determination may also include the actual dollar amount to defray the cost of enforcing the collection.
- (d) Upon the decision of a Deficiency Determination the Office shall mail to the Assessed Business a Notice of Proposed Deficiency Determination at the current address for the business on file with the Office that will include:
  - (1) An explanation of the reasoning and circumstances triggering the notice;
  - (2) A Deficiency Determination reflecting the principal amount of assessment owed and delinquent;
  - (3) A determination of cost based on the actual cost incurred in the enforcement of the collection;
  - (4) The amount or rate of the penalty to be assessed commencing 30 days after the notice has been given to the Business;
  - (5) Providing payment instructions to the Business; and
  - (6) Explaining the right to filing a Petition for Review as described in Section 5358.9.
- (e) The Notice shall be delivered to the Assessed Business by mail or personal service and service shall be complete upon deposit in the U.S. mail or upon actual personal service, respectively.
- (f) The Deficiency Determination becomes final and effective unless a Petition for Review has been filed within 30 calendar days of completion of service.

Note: Authority cited: Sections 11152 and 13995.69, Government Code. Reference: Sections 13995.65, 13995.72, 13995.82, Government Code

#### Section 5358.9. Review of Deficiency Determination

(a) An Assessed Business receiving a Deficiency Determination may file a Petition for Review requesting a review of the determination of deficiency.

(b) The petition shall be submitted in writing complying with all the following requirements:

(1) It shall state the specific grounds upon which it is based;

(2) It shall be supported by records applicable and declarations or affidavits under the penalty of perjury;

(3) It shall be filed with the Office no later than 30 calendar days after the service of the Notice of Proposed Deficiency Determination.

(4) Filing with the Office is accomplished on the date of actual receipt by the Office through mail or by personal service.

(c) In reconsidering the Determination of Deficiency, the Office may grant an administrative hearing to provide the Assessed Business an opportunity to personally appear and present its request for Review.

(d) The Petition after review or administrative hearing will be granted or denied by the Office in writing no later than 30 calendar days of the date of the Petition, by issuing an Order of Review as follows:

(1) A Notice of Order of Review shall be issued in writing and mailed to the Assessed Business at the current address for the Business Location on file with the Office.

(2) The Notice will advise about the assessment owed and a Revised Assessment Bill shall be issued.

(3) An assessment correction correcting an error caused by the failure of the Assessed Business to provide the required information in a timely manner shall include the actual amount for recouping the cost incurred in making the correction.

(e) The Order of Review becomes final and effective 30 calendar days after completion of service of the notice an order on the petitioner Business.

Note: Authority cited: Sections 11152 and 13995.69, Government Code. Reference: Sections 13995.65, 13995.82, Government Code

#### Section 5359.10 Judicial Enforcement

(a) Upon the failure of payment of assessment, cost and penalties pursuant to a Deficiency Determination or an Order of Review, judicial enforcement and collection of the debt is available pursuant to Subdivisions (f), (g), and (h) of Section 13995.82 of the Government Code.

(b) Initiation of such civil action shall be in the sole discretionary decision of the Secretary or in the discretionary decision of the Deputy Secretary of Tourism in consultation with the Executive Committee of the California Travel and Tourism Committee.

(c) All civil actions shall be taken in the name of the Secretary.

Note: Authority cited: Sections 11152 and 13995.69, Government Code. Reference: Section 13995.71, 13995.82, Government Code

## Subchapter 6. Passenger Car Rental Industry Collection and Enforcement

### Section 5360. Collection of Assessments

(a) The Passenger Car Rental Industry Assessment shall be paid in accordance with the provisions in section 5357.2.

(b) Any payment not received in the Office by the 25<sup>th</sup> of any given month, shall be considered deficient and subject to the provisions of sections 5358.6 through 5358.10.

(c) A Passenger Car Rental Assessment Form submitted by the 25<sup>th</sup> of the month, without payment received in the Office by the 25<sup>th</sup> of that same month, shall be considered deficient and shall be subject to the provisions the provisions of sections 5358.6 through 5358.10.

Note: Authority cited: Section 13995.69, Government Code. Reference: Sections 13995.20, 13995.65.5 and 13995.92, Government Code; and Section 2015.5, Code of Civil Procedure.

## Subchapter 4. Passenger Car Rental Industry Tourism Assessment

### Amend Section 5357.2. Payment of Assessments

(a) The Passenger Car Rental Industry Segment assessment will be payable monthly, beginning January 2007. All assessments collected by a car rental company for a given month shall be submitted to the Office within 25 days of each month end beginning February 25, 2007.

(b) The Passenger Car Rental Industry Segment Assessment Form, (OT-100, new 1/1/2007) hereby incorporated by reference, shall be submitted by each member of the Passenger Car Rental Industry Segment together with the remittance of the assessment calculated thereon.

~~(c) A Passenger Car Rental Company shall be assessed a late penalty as set forth in Government Code Section 13995.72 for failure to submit a timely Passenger Car Rental Industry Segment Assessment Form and payment as required by this section.~~

Note: Authority cited: Section 13995.69, Government Code. Reference: Sections 13995.20, 13995.65.5 and 13995.92, Government Code; and Section 2015.5, Code of Civil Procedure.